

Potential Risks to Avoidance of Customs Duties: Research in Kosovo

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Abstract:

In order to understand, the potential risk factors of the avoidance of customs duties. In this way through the questionnaire, we asked the respondents if there have the potential risk of avoidance from risks: customs value, origin of goods, misdescription and misclassification of goods, quantity of goods, incoterms. In this case we found these results: from 228 respondents, 68 of their are thinking that avoidance of customs duties, from the customs value, is risk potential 10%- 20%; there 124 of their are thinking that avoidance of customs duties, from the origin of goods, is risk potential 1% - 10%; there 128 of their are thinking that avoidance of customs duties, from the misdescription and misclassification of goods, is risk potential 1% - 10%. There from 232 respondents, 124 of their are thinking that avoidance of customs duties, from the terms of delivery of goods, is risk potential 1% - 10%, and from 224 respondents there 64 respondents, are thinking that avoidance of customs duties, from the quantity of goods, is risk potential 10% -20%. Therefore are the more potential risk from customs value and from quantity of goods.

Keywords: avoidance, customs duties, potential risks

1. Introduction

To understanding, if these risk factors are potential even in Kosovo, is researched to understand which are more risk potential, to avoidance of the customs duties. The risk potential factors, in this research are submitted: customs value, origin of goods, misdescription of goods, misclassification, quantity of goods, incoterms. The research it is done through the questionnaire. the answers from the questionnaire are submitted in this paper, which are in this paper.

2. Literature Review

2.1 Customs value

The customs value is essential to determine the correct amount of any customs duty to be paid on imported goods (*Customs Manual on valuation, May 2016*). The customs value of goods is very relevant for the purpose of calculation of taxes and customs duties. The customs value of goods, refers to commodity price plus the cost of transportation, cost of insurance of the goods during transport and other costs added to goods from the county of departure to the country of destination, respectively country of clearance. But the problem here is that the price of goods and other costs for transportation and insurance of the goods, are declared correctly or not, from the company representative, here requires the commitment of staff appointed to a customs authority to verify that the declared customs value is correct or not, despite the fact that the difficulty of verifying the customs value of a product that is declared for clearance. There are times when different companies on the importation of goods, do not correct declaration of customs

value of goods in order to pay less in taxes and customs duties. Given that the calculation of customs duties, is primarily based on the value of the goods "Ad Value". Then, as lower value of the goods to be declared, less customs duties is obliged to pay, this is the purpose why companies make frauds in customs value. In order to reduce as much opportunity for companies to make the avoidance of customs duties. Customs of different countries, undertake the measure of verification of the value and if the value declared does not provide the level of reliability that is correct, then custom made revaluation of goods. The re-evaluation is based on six evaluation methods which these are accepted by the international aspect, respectively the WCO and provided with customs legislation of the relevant country.

According to Article 70 of the Union Customs Code the customs value of imported goods shall be the transaction value, that is, the price actually paid or payable for the goods when sold for export to the customs territory of the Community, adjusted, where necessary, in accordance with Articles 71 and 72 of the Union Customs Code. The main risks in this area are:

Under valuation: of the imported goods, commission from the value of amounts that must be added, such as royalties commissions, freight and insurance costs, etc.

Over valuation: of imported goods (e.g. Anti-dumping duty or import prohibitions could be applicable for goods under a specified price level, certain agricultural products, can be over valued to avoid paying higher duties, etc.), of exported goods (e.g. for VAT refunds, returned goods, etc.).

Wrong valuation method - In order to assess the risk the auditor can compare: the price actually paid or payable of the selected product codes with average prices from the customs information system (if available), the customs value of similar goods purchased from different suppliers, the declared customs value with the internal sale price or with the value of similar goods, a selection of different customs declarations with each other to ascertain if there are different prices declared for the same product.

If there are significant differences it can indicate the existence of irregularities in the customs value declared and it is necessary to investigate why.

In this way, where is there doubt about incorrect customs value, It is essential in an audit to examine the operator's accounts carefully, in order to ascertain that all purchases of goods from third countries are entered correctly in the books. In the operator's accounts the auditor should search for the existence of practices such as: double invoicing, undervaluation of goods, undeclared consignments, additional payments for deliveries, or some payments that are to be added to the price paid in accordance with Article 71 of the Union Customs Code. Previous audit reports of the operator (if any) should be examined for issues or practices that have may have arisen previously and should be checked again. The auditor should check if the company has internal controls to ensure a reconciliation of import operations with accounting and internal controls. The purpose of this check is to ensure that all received invoices relating to third country purchasing are available for checking within the company accounts. Therefore, the customs value is a risk for avoidance of customs duties. Here in our research, we interested, to know, if is the risk for the avoidance of customs duties even in Kosovo from customs value.

Origin of customs goods - Preferential Rules of Origin are concerned with determining the nationality of goods (*Customs Manual on Preferential Origin, May 2016*). Another risk for avoidance of customs duties is the origin of customs goods. In this way change of origin via third countries to avoid higher duty rate. The origin of the goods is an element where is possible, to cause the customs duty evasion from some companies. Mainly, evasion of customs duties may be caused in those cases where dealing with goods being declared for clearance, originating from a country in agreements on preferential rates for goods originating from that country, but in fact the same goods are not from that country but declared as goods originating preferential country, only to profit lower or zero rate. Therefore, considering the companies that make the clearance of goods, those goods are from the third countries or from countries that do not benefit the country preferential rate of clearance, in this case can also make falsified certificate of origin of that product, if those goods originating country that receives preferential rate, only to perform customs fraud, respectively paid less or zero taxes. Therefore, this is an element of risk that the customs authorities of a country must to carry out, the control of this issue. Which this control is carried out as in the case where of goods the entering in a country. Description a case is good way to understand the risk from origin of goods (*Commercial Fraud Typologies Summary, 2010*), OLAF informed Member States of a suspected evasion of duties on the importation of hand pallet trucks of Chinese origin. The French services then analyzed the traffic, and discovered a sudden increase in imports, particularly from Thailand, shortly after the introduction of these duties. Investigations were conducted on the French companies most likely to be involved in this fraud. A Community mission made up of French, German and Italian officers was then organized in Thailand, to collect evidence of the true origin of these goods. With the agreement of Thailand's Ministry of Trade, inspections were conducted on the premises of manufacturers of hand pallet trucks, in order to ascertain the true origin of the goods by examining certificates of preferential origin and comparing the price of the imported articles with the manufacturing cost. Nine rules of origin offences were then notified in France, involving duties totaling more than 1.4 million Euros.

Falsification of origin and misdescription (trade description fraud) may be perpetrated with a view to facilitating the importation of inferior goods so as to obtain an unfair advantage on the domestic market when competing against other, often home-produced goods. Fraudsters may be motivated to obtain maximum fiscal advantage in manufacturing cost by producing in countries with no quality control or regard for safety or consumer protection standards.

There are several kinds of preference regimes, e.g. GSP and EC preference. As an example, the GSP rules of origin consist of three main elements, namely, origin criteria, documentary evidence and the direct consignment rules. Origin/preference fraud means any attempt to knowingly violate or abuse rules of origin and/or Customs documentary requirements as laid down by bilateral or multilateral agreements in force in the country concerned.

Misdescription and misclassification -Goods misdescribed by traders to avoid a tariff heading (*Anti-Dumping and Countervailing Duties Manual, 2016*).Occurs when any information provided in relation to goods under clearance is false. Misdescription can

take place when goods are imported or exported and also when goods are brought into free circulation (e.g. removal from warehousing). Misdescription may be observed in connection with, among other things, classification of imported and/or exported goods. And Misclassification of imported goods motivated by the staged increase of duty rate.

Considering that each customs goods, has a tariff codes in the customs tariff, that in this code, besides others, represents and the customs tax rate of VAT, excise or other possible rate, then this element can to use from the traders to pay less tax or not pay, differently it classifies respectively a goods in order to decide by a goods you have to pay taxes on other goods not subject to customs duties or has a lower rate than goods which really should be classified those goods. Therefore, for prevention, or to reduce customs fraud in this area, customs of the respective countries, make the customs control, to verify, if the goods are classified right or not. So this is a risk factor for evading customs duties, if a trader causes customs fraud, by changed tariff code, of a goods that pays full taxes of a goods that does not pay or pay less duty.

A case – misdescription and origin;(Commercial Fraud Typologies Summary, 2010)A Customs audit was carried out on a joint stock company, in order to check on the Customs declarations presented and how they matched with the accounting records found, whether mandatory or optional. The official representatives of the company audited were found to have evaded the payment of anti-dumping duties and Value Added Tax on goods (CFL-i lamps of Chinese origin), thus rendering themselves liable for offences provided for in, and sanctioned by, the penal code.

An analysis of the business correspondence and tax documentation obtained from the company revealed discrepancies between the particulars relating to the tariff classification and the origin of the goods traded. The fraudulent Customs declarations uncovered as a result of the audit related to two different methods of tax evasion:

- a) Evading the payment of anti-dumping duties and VAT on CFL-i lamps of Chinese origin, by presenting a declaration with different goods for inspection (halogen lamps and/or other lighting appliances) than those actually imported (CFL-i lamps).
- b) Presenting Customs declarations showing an origin different from the true origin of the goods.

Incoterms -Terms of delivery of goods

The Incoterms rules have become an essential part of the daily language of trade. They have been incorporated in contracts for the sale of goods worldwide and provide rules and guidance to importers, exporters, lawyers, transporters, insurers and students of international trade(ICC, *Incoterms*® 2010). Incoterms -Terms of delivery of goods , or the conditions of consignments from the country of departure to the place of destination , is also another element that is important in the calculation of customs duties, also is an element the possibility of avoiding customs by the company . We have already mentioned that to form the customs the value of the goods in order to applied for the calculation of customs duties in addition to the price of goods must also collect other costs, thus formed the basis of calculating the tax. Therefore, the companies that have to order to avoid customs duties, use this element to reduce the value of goods in this way reduced the payment of customs duties. The way of reduction through this element is, considering, that if transport costs, insurance costs, costs of loading / unloading and

other operating expenses during the implementation of the logistical arrangements, the carrying (pays) the purchaser of the goods, then it should be added the price of goods, while if these costs borne by the seller of goods are not entered in the customs base for the calculation of the tax, and therefore should exploited this way, always companies that aim at avoiding custom duties, find ways to declare that all costs operating for the transfer of goods from the place of departure to the place of destination shall be borne by the consignor / exporter (seller) of goods so that base customs calculator to be smaller and to result in a smaller tax. Therefore, the country's customs, importance the dedicates, amount of costs that carried of goods, to verify who actually bear the costs, or if these costs are paid realistically the buyer of the goods and claimed that the following pay the seller only to caused customs fraud, respectively to create evasion tax for the benefit of his company in the way illegal.

The quantity of goods in clearance a risk for avoidance

Control of quantity of goods, is also a relevant element which enables the reduction of fraud. Even through the quantity of goods, some companies, trying to do the fraud in customs, with the same purpose to pay less customs duty. Until the above mentioned point, companies reduce the value of the goods, to pay less customs duty, at this point, companies declare an incorrect quantity of goods to pay less customs duty. Therefore, based on the level of risk, selected companies that are suspected of not declaring the quantity of goods and also by officials of the customs authority, verify and control the quantity of goods that is declared forces to clearance if it responds declaration in documentary or is quantity bigger from what is declared by the commercial documents.

3. Methodology:

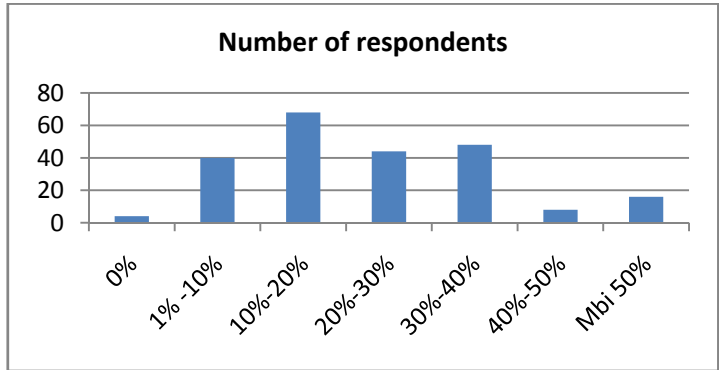
Survey was realize through questionnaires, which were distributed 234 questionnaires. Questionnaires were distributed mainly to the importing companies, officers that realize controls to businesses, customs agents, accountants and international transport companies and others.

4. Results:

To understanding, if these risk factors are potential even in Kosovo, is researched to understand which are more risk potential, to avoidance customs duties. The risk potential factors, in this research are: customs value, origin of goods, misdescription of goods, misclassification, quantity of goods.

To assessment, the first risk factor, **customs value**, in this way, we asked the respondents; How do you think, does have the avoidance of customs duties, from the customs value of goods. In this case we taken the answers, as following:

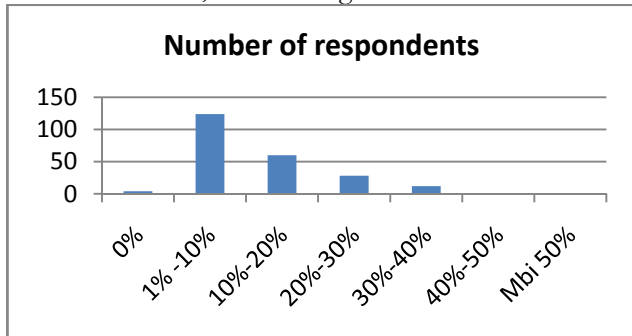
Table 1 Level of Percentage	Number of respondents
0%	4
1% -10%	40
10%-20%	68
20%-30%	44
30%-40%	48
40%-50%	8
Over 50%	16



In the table 1, we can see that 68 respondents, are thinking that avoidance of customs duties, from the customs value, is risk potential 10% - 20%.

To assessment, another risk factor, **origin of goods**, in this way, we asked the respondents; How do you think, does have the avoidance of customs duties, from the origin of goods. In this case we taken the answers, as following:

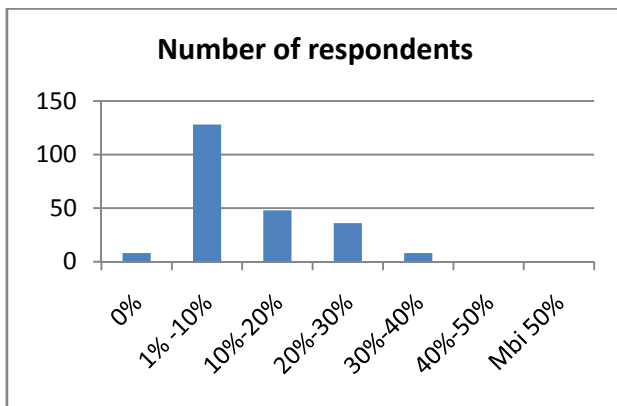
Table 2 Level of Percentage	Number of respondents
0%	4
1% -10%	124
10%-20%	60
20%-30%	28
30%-40%	12
40%-50%	0
Over 50%	0



In the table 2, we can see that 124 respondents, are thinking that avoidance of customs duties, from the origin of goods, is risk potential 1% - 10%.

To assessment, other risk factor, **misdescription and misclassification**, in this way, we asked the respondents; How do you think, does have the avoidance of customs duties, from the misdescription and misclassification of goods. In this case we taken the answers, as following:

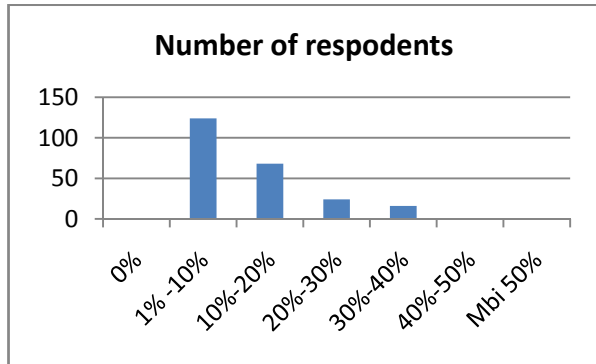
Table 3 Level of Percentage	Number of respondents
0%	8
1% -10%	128
10%-20%	48
20%-30%	36
30%-40%	8
40%-50%	0
Over 50%	0



In the table 3, we can see that 128 respondents, are thinking that avoidance of customs duties, from the misdescription and misclassification of goods, is risk potential 1% - 10%.

To assessment, other risk factor, **Incotremis -Terms of delivery of goods**, in this way, we asked the respondents; How do you think, does have the avoidance of customs duties, from the terms of delivery of goods. In this case we taken the answers, as following:

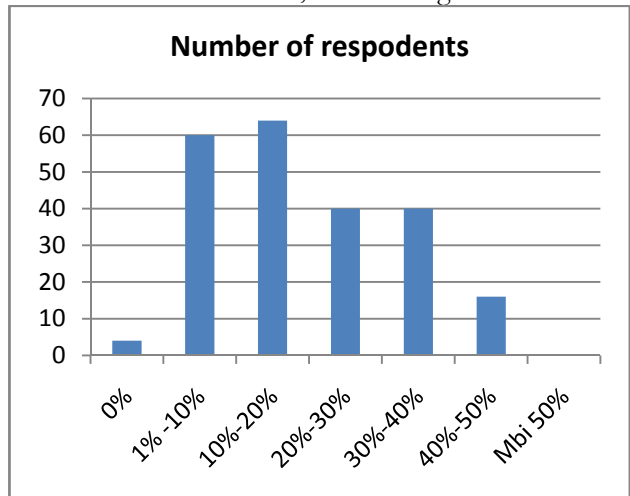
Table 4 Level of Percentage	Number of respondents
0%	0
1% -10%	124
10%-20%	68
20%-30%	24
30%-40%	16
40%-50%	0
Over 50%	0



In the table 4, we can see that 124 respondents, are thinking that avoidance of customs duties, from the terms of delivery of goods, is risk potential 1% - 10%.

To assessment, other risk factor, **the quantity of goods**, in this way, we asked the respondents; How do you think, does have the avoidance of customs duties, from the terms of delivery of goods. In this case we taken the answers, as following:

Table 5 Level of Percentage	Number of respondents
0%	4
1% -10%	60
10%-20%	64
20%-30%	40
30%-40%	40
40%-50%	16
Over 50%	0



In the table 5, we can see that 64 respondents, are thinking that avoidance of customs duties, from **the quantity of goods**, is risk potential 10% - 20%.

Conclusion:

As the results that submitted above, we can see that, the potential risk of avoidance of the customs duties are customs value and quantity of goods, during imported, while there is lower risk of avoidance from origin of goods, misdescription, misclassification and from incoterms or delivery conditions. Therefore in this way is very important to strengthen mechanisms to control the potential risks.

References:

- Customs Manual on Valuation, Document reviewed May 2016. This Manual provides a guide to the interpretation of the law governing Valuation for Customs Purposes which is set out in Commission Delegated Regulation (EU) No. 2015/2446 and Commission Implementing Regulation No. 2015/2447 laying down the detailed rules and implementing provisions of Regulation (EU) No 952/2013 of the European Parliament and Council establishing the Union Customs Code, and it should be read in conjunction with these regulations. <http://www.europa.eu.int/>
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- ICC – International Chamber of Commerce. Incoterms 2010. www.iccwbo.org
- Customs Procedures Branch Nenagh. Anti-Dumping and Countervailing Duties Manual, Document Reviewed May 2016. This Manual Provides a guide to the interpretation of the law governing all aspects of the anti-dumping/countervailing duty procedure and should be read in conjunction with the relevant regulations. Customsreliefs@revenue.ie